APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,526	12/21/2001	Subir E. Gupta	005222.00117	2157

			EXAMINER
29638	7590	02/16/2006	MEINECKE DIAZ, SUSANNA M

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ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Office Action Summary		10/024,526	GUPTA ET AL.
		Examiner	Art Unit
		Susanna M. Diaz	3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *21 December 2001*.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-22* is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-22* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *21 December 2001* is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a) ☐ All b) ☐ Some * c) ☐ None of:

       1. ☐ Certified copies of the priority documents have been received.

       2. ☐ Certified copies of the priority documents have been received in Application No. _____.

       3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *3/21/02*.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-22 are presented for examination.

Drawings

2.   The drawings are objected to because Figures 3 and 12-22 contain shaded

areas that make it difficult to read the text in the shaded areas. Please try to lighten up

these areas so that the text is readable. Corrected drawing sheets in compliance with

37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the

application. Any amended replacement drawing sheet should include all of the figures

appearing on the immediate prior version of the sheet, even if only one figure is being

amended. The figure or figure number of an amended drawing should not be labeled as

"amended." If a drawing figure is to be canceled, the appropriate figure must be

removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several

views of the drawings for consistency. Additional replacement sheets may be necessary

to show the renumbering of the remaining figures. Each drawing sheet submitted after

the filing date of an application must be labeled in the top margin as either

"Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are

not accepted by the examiner, the applicant will be notified and informed of any required

corrective action in the next Office action. The objection to the drawings will not be held

in abeyance.

Specification

3.   The use of the trademarks Excel and Access has been noted in this application.

It should be capitalized wherever it appears and be accompanied by the generic

terminology.

Although the use of trademarks is permissible in patent applications, the

proprietary nature of the marks should be respected and every effort made to prevent

their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

5.   Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

Claims 13 and 14 contain the trademarks/trade names Excel® and Access®.

Where a trademark or trade name is used in a claim as a limitation to identify or

describe a particular material or product, the claim does not comply with the

requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218

USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade

name cannot be used properly to identify any particular material or product. A

trademark or trade name is used to identify a source of goods, and not the goods

themselves. Thus, a trademark or trade name does not identify or describe the goods

associated with the trademark or trade name. In the present case, the trademark/trade

names are used to identify/describe a generic spreadsheet/database and, accordingly,

the identification/description is indefinite.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7.   Claims 1-11, 13-15, and 19-22 are rejected under 35 U.S.C. 102(e) as being

anticipated by Woo et al. (U.S. Patent No. 6,910,017).

Woo discloses a method for analyzing product sales strategies using archived

sales data, said method comprising the steps of:

[Claim 1]   importing a sales profile (col. 3, lines 4-49; col. 4, lines 7-10; col. 5, lines

1-33);

defining an analysis period (col. 5, lines 34-49; col. 6, lines 19-41; col. 7, line 21

through col. 8, line 49);

calculating an adjusted weekly sale value based on said sales profile and said

analysis period (col. 5, lines 34-49; col. 6, lines 19-41; col. 7, line 21 through col. 8, line

49);

calculating an uplifted sale value based on a selected uplift percentage (Fig. 6;

col. 6, line 60 through col. 7, line 14); and

calculating a profit based on said uplifted sale value and said adjusted weekly

sale value (col. 5, lines 34-49; col. 6, lines 19-41; col. 7, line 21 through col. 8, line 49);

[Claim 2]   performing a risk analysis (col. 3, lines 19-23; col. 8, lines 19-38);

[Claim 3]   archiving said adjusted weekly sale value (col. 8, lines 38-49 – New data,

based on weekly sales, is used to refine the model as such data becomes available);

[Claim 4]   wherein said step of performing a risk analysis comprises a step of

performing a best case analysis (col. 8, lines 19-38 – A scenario in which higher

profitability is predicted with a lower probability chance of occurring is a best case

analysis. Also, as per col. 5, lines 34-44, predicted profitability is determined within a

range of error. Each extreme in this range of error reflects a best and worst case

analysis, respectively);

[Claim 5]   wherein said step of performing a risk analysis comprises a step of

performing a worst case analysis (col. 8, lines 19-38 – A scenario in which lower

profitability is predicted with a higher probability chance of occurring is a worst case

analysis. Also, as per col. 5, lines 34-44, predicted profitability is determined within a

range of error. Each extreme in this range of error reflects a best and worst case

analysis, respectively);

[Claim 6]   formatting at least a part of the archived sales data into one or more text

files (col. 3, lines 4-49; col. 4, lines 7-10; col. 5, lines 1-33);

formatting said text files into corresponding database files (col. 3, lines 4-49; col.

4, lines 7-10; col. 5, lines 1-33);

formatting said database files into corresponding spreadsheet files (col. 5, lines

1-33); and

displaying said spreadsheet files for a user (col. 5, lines 1-33);

[Claim 7]   wherein said text file comprises a spreadsheet (col. 5, lines 1-33);

[Claim 8]   wherein said text file comprises a hierarchy file listing products identified

by product number (col. 3, lines 51-52; col. 4, line 42);

[Claim 9]   wherein said step of formatting at least a part of the archived sales data

into one or more text files (col. 4, lines 7-10; col. 5, lines 1-28 – Data must be entered in

order to populate the files) comprises the steps of:

entering a class number and a class description (col. 3, line 35 through col. 4,

line 47);

entering a subclass number and a subclass description (col. 3, line 35 through

col. 4, line 47);

entering a style number and a style description (col. 3, line 35 through col. 4, line

47);

entering an option number and an option description (col. 3, line 35 through col.

4, line 47); and

entering a product identifier number and an identifier number description (col. 3,

line 35 through col. 4, line 47);

[Claim 10]   wherein said text file comprises an actuals file listing empirical figures for

product sales (col. 3, lines 39-49; col. 8, lines 38-49);

[Claim 11]   wherein said step of formatting at least a part of the archived sales data

into one or more text files (col. 4, lines 7-10; col. 5, lines 1-28 – Data must be entered in

order to populate the files) comprises the steps of:

entering a week and a product identifier number (col. 2, lines 53-67; col. 3, line

39 through col. 4, line 47);

entering pricing data (col. 2, lines 53-67);

entering stock on hand (col. 2, lines 53-67); and

entering commitment and sales units (col. 2, lines 53-67; col. 3, lines 15-16);

[Claim 13]   wherein at least one said database file comprises an Access database

(col. 5, lines 1-33);

[Claim 14]   wherein at least one said spreadsheet file comprises an Excel database

(col. 5, lines 1-33);

[Claim 15]   validating the archived sales data to insure integrity of retrieved files prior

to said step of formatting at least a part of the archived sales data into said one or more

text files (col. 8, lines 39-49 – The model is modified as new actual data on sales

becomes available);

[Claim 19]   wherein said step of validating the archived sales data comprises the step

of checking file entries (col. 8, lines 39-49 – The model is modified as new actual data

on sales becomes available);

[Claim 20]   wherein said step of validating the archived sales data comprises the step

of checking for new sales data (col. 8, lines 39-49 – The model is modified as new

actual data on sales becomes available).

[Claims 21, 22]   Claims 21 and 22 recite limitations already addressed by the

rejection of claim 1 above; therefore, the same rejection applies.

Woo is computer-implemented using software and various databases (col. 3,

lines 4-49; col. 4, lines 7-10; col. 5, lines 1-33), thereby addressing the recited software,

processor, and memory limitations.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

9.   Claims 12 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Woo et al. (U.S. Patent No. 6,910,017), as applied to claims 11 and 15 above.

[Claim 12]   As discussed above, Woo accepts various types of entry into its

databases for price decision support, yet Woo does not expressly disclose that a tax

rate is entered. These differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106. Nevertheless, the Examiner submits that it is old and well-known in the art of sales analysis to incorporate tax rate data. This is useful to determine the effect, if any, of a local sales tax on the sale of an item. Since Woo analyzes sales data over time, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Woo to incorporate tax rate entries into its pricing decision calculations in order to facilitate more comprehensive analysis in regions where a local sales tax is significant enough to affect the sale of an item.

[Claims 16-18]   While Woo validates, or checks for, various types of data for updating the model (as discussed above), Woo does not expressly teach that validating archived sales data comprises entering net cost prices (claim 16), entering original selling prices (claim 17), or checking for new products (claim 18). However, Woo's calculations are related to optimizing and predicting profit (col. 8, lines 19-45). Woo also understands that each product has a life cycle which typically peaks at maximum

popularity and then trails off over time (col. 4, lines 48-62). Official Notice is taken that it

is old and well-known in the art of product planning to introduce new products into the

market. This is important to continue interest in one's business, especially to replace

older products that drift into obsolescence. Furthermore, it is also old and well-known in

the art of sales that profit is directly correlated to selling prices and net cost prices.

Since Woo validates its model based on continuously updated information (including

lifecycle data) to improve predictions (col. 8, lines 45-49), the Examiner submits that it

would have been obvious to one of ordinary skill in the art at the time of Applicant's

invention to modify Woo to validate archived sales data by entering net cost prices

(claim 16), entering original selling prices (claim 17), or checking for new products

(claim 18) in order to more accurately enable Woo's users to perform profit-related

analyses in light of various product lifecycles and introduction of new products.

Conclusion

10.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Boyd et al. (US 2002/0123930) – Discloses a promotion pricing system and

method that includes an analysis of the relationship between pricing and demand lift.

Cunningham et al. (U.S. Patent No. 6,029,139) – Discloses a method and

apparatus for optimizing promotional sale of products based upon historical data.

Delurgio et al. (US 2002/0165760) – Discloses an interface for merchandise price

optimization.

Delurgio et al. (US 2003/0110072) – Discloses an interface for merchandise price optimization.

Friend ("Welcome to the New World of Merchandising") – Discloses various features of merchandising optimization systems.

"ShopKo Expands Use of Spotlight Markdown Optimizer" – Discloses features of ShopKo's Markdown Optimizer price optimization software.

11.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 10 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Susanna Diaz
Susanna M. Diaz
Primary Examiner
Art Unit 3623

February 9, 2006